



# NOTARY NOTES

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Alvin A. Jaeger, Secretary Of State

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## Greetings!

*As* a commissioned notary public, you have been given a position of trust and one that requires you to perform your duties with the utmost integrity.

*The* notarial duties you perform are not just meaningless functions. They mean something and have since similar responsibilities came into existence in ancient Rome. When you were appointed, you become an officer of the state and your foremost assignment is to follow the law when carrying out your duties.

*That* is why you are asked to take the following oath when you apply to become a notary:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God."

*The* above is a personal commitment not to be taken lightly. You swore to it before a notary public.

*In* another portion of this newsletter are listed violations occurring since June 2005. Please note the monetary fines associated with some of them. The list could be even longer.

*During* the past eighteen months, there have been numerous situations where documents were submitted to this office containing violations, which were not referred to the Civil Litigation Division of the Attorney General's office. Rather, they were handled with a letter of admonishment.

*What* is surprising and at the same time perplexing is that the vast majority of these violations occurred on the forms related to the notary process itself, e.g., notary bond and application forms. There were missing dates (quite often the year), incomplete venues, incorrect commission expiration dates, erroneous use of a notary seal embosser, etc. We obviously cannot ignore them and we don't.

*Therefore*, I urge you to read every word in this newsletter and to review the law periodically. Your position is essential. Do it right. Do it well. People depend on you.

Al Jaeger  
Secretary of State

## Do's and Don'ts

1. *When* notarizing do not just sign and stamp the document. It must contain a venue (state and county where the notarial act is being performed) and either an acknowledgement or a jurat. If this information is not on the document being notarized, the notary is responsible for either writing or typing this information on the document. Examples can be found at [www.nd.gov/sos/notaryserv/certifications.html](http://www.nd.gov/sos/notaryserv/certifications.html).
2. *It* is illegal for a notary to perform notarial duties prior to the starting date of his or her commission or beyond the commission's expiration date. The commission begins at 12:00 a.m. on the commencement date and expires at midnight on the commission's expiration date.
3. *Until* the notary receives his or her commission, it is illegal for them to perform any notarial act. Therefore, the timely filing of the seal/stamp impression will allow the Secretary of State's office to issue the new commission to the notary. It is usually mailed within one or two business days after the impression is received.
4. *A* notary's seal/stamp should not obscure text nor overlap any written or typed text. The impression of the seal/stamp on the document must be clear and legible.
5. *It* is important that impressions made by a notary's seal/stamp are readable. If a notary's embossed impressions are not readable, the notary should contact the Secretary of State's office to obtain an authorization to purchase a new notary seal/stamp. When using a self-inking stamp, it should be well inked.
6. *The* commission expiration date on the notary's seal/stamp must match the date on the notary's Certificate of Commission and the notary's name must be spelled the same on both. If either is incorrect, the notary should immediately contact the Secretary of State's office. The commission's expiration date is assigned by the Secretary of State and appears on the Certificate of Commission. A notary should not use the date the surety company has listed on its notary bond form.
7. *If* a notary lists an incorrect commission expiration date, it could invalidate the document being notarized. If a notary's seal/stamp contains the expiration date, it is not necessary for the notary public to list it again anywhere on the document.

8. *When* a notary is commissioned and becomes an officer of the state, it allows him or her to notarize anywhere in the entire State of North Dakota.
9. *The* law requires the notary's Certificate of Commission be posted in a conspicuous place in his or her office.

### *Who Is Responsible?*

*A* notary commission is issued to an individual. Therefore, even though an employer may have paid for the notary's commission, the notary's seal/stamp must always remain under the direct and exclusive control of the notary throughout the entire time of his or her commission.

*A* notary's first obligation is always to the law. If the notary violates the law they will be held accountable not their employer. If your employer asks you to violate the law – think twice before you do.

### *The Venue*

*A* venue describes where a notarial act took place. A pre-printed venue may look like this:

State of \_\_\_\_\_  
County of \_\_\_\_\_

Such a simple part of a notarial act can generate a lot of questions from inexperienced notaries.

*Why* is a venue necessary anyway? Because it serves a practical purpose – if a lawsuit is filed concerning the document, the venue tells the court where you notarized it. The venue also establishes whether the notary had the authority to act in the place in which the notarial act occurred.

### *Notarizing In A Foreign Language*

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*You* can notarize a document written in a language you don't understand, but there are some caveats. If a document is in Spanish or French, for example, and you don't know what it says, you could never be sure that it's not fraudulent.

*The* problem is all the knottier if the signer wants to sign a name in characters you can't read, such as Arabic or Chinese. It would be advisable to direct the signer to a notary who does understand the language. Many countries have consulates in major American cities with officials capable of notarizing documents from the country they represent.

*If* you decide to notarize a document in a language you can't read, be sure the notarial wording ("certificate") is in a language you can read. Also, you must be able to talk with the signer in a language you both understand.

## *Important Things To Remember*



1. *The* purpose of a notarization is to protect against fraud. A notarized signature proves the person personally appeared before the notary public and willingly and freely affixed or acknowledged his or her signature. If these elements are not present, it is unlawful for the notary to notarize.
2. *The* notarization of a signature does not prove that a document or statement is true or accurate nor does it validate or legalize a document. It simply proves the person personally appeared as stated in #1.
3. *In* order to purchase a new or replacement notary seal/stamp from a vendor, a notary must first obtain a Certificate of Authorization from the Secretary of State. State notary law only allows vendors to provide notary seal/stamps to those individuals who have presented them with an official authorization. Until such time an impression of the notary seal/stamp has been filed with and the notary has received confirmation from the Secretary of State, a notary is not authorized to use the new notary seal/stamp or perform notarial duties with it.
4. *When* notarizing, a notary public must always sign their name exactly as it appears on his or her commission. For example, if the commission lists the notary's middle initial, that is the way the notary must sign the notarization. If a notary wants to make a change, a name change form needs to be completed. Name change forms can be found on the Secretary of State's web site at [www.nd.gov/sos](http://www.nd.gov/sos).

### *A No-No Notarizing for Self or Family Members*

*A* notary is prohibited from notarizing his or her spouse's signature and it is impossible and illegal for a notary to notarize his or her own signature. [NDCC 44-06-13.1 (3)]

*A* Notary should not notarize a document for close family members. Notarizing documents for parents, siblings, spouses, and other relatives opens an ethical can of worms for the Notary. In many cases, a close family relationship with a signer automatically brings beneficial interest. Although North Dakota only prohibits notarizing if the Notary is named in the document, it is best to refer close family members to another Notary in order to avoid even the slightest appearance of bias.

### *Don't Be Misinformed*

Calling your neighbor or asking a coworker may not be the best choice when you have questions regarding your notary duties. It is best to look at the law or call the Secretary of State's office to receive accurate and up-to-date information.

### *Renewal Time Bafflement*

*When* renewing or applying for a new commission, an impression of the notary's seal/stamp must be submitted to the

Secretary of State's office for approval on or before the month and day listed on the authorization to purchase. The law only allows the Secretary of State to issue the commission after the impression of the seal/stamp has been filed with the office.

Approximately two months before the expiration of a notary's commission, the Secretary of State's office will send out a renewal packet. The renewal packet will be identified as "official mail" in the upper left corner of the envelope. At the same time or even before, private surety bond vendors, who have purchased a list under the state's open records law, will also be sending out renewal packets in an attempt to secure the notary's bond business. A notary may choose any vendor of their choice. However, the Secretary of State's office has no control over the information in the vendor packets.

## *Notary Violations From July 1, 2005 through June 30, 2006*



(Note: The circumstances surrounding each violation are often different and result in varying penalties even though some of the following abbreviated summaries may appear to be similar in nature. All violations are a matter of public record under the state's open records laws.)

**June 17, 2005** – Notary violated 44-06-04.1 by notarizing a document without receiving commission: \$50 penalty.

**June 28, 2005** – Notary violated 44-06-04.1 by notarizing a document without receiving commission: \$200.00

**August 3, 2005** – Notary violated 44-06-03.1(1) by notarizing a document that was not signed: \$75 and three-month suspension.

**August 11, 2005** – Notary violated 44-06-04 by notarizing a document when she did not have a commission: Notice of entry of order by default, denying application and right to hearing.

**September 12, 2005** – Notary violated 44-06-13.1(3) by notarizing his own signature: six-month suspension.

**October 12, 2005** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence: six-month suspension.

**October 12, 2005** – Notary violated 44-06-13 by notarizing without receiving commission: \$50 penalty.

**October 12, 2005** – Notary violated 44-06-13.1(3) by notarizing her own signature: six-month suspension.

**December 1, 2005** – Notary violated 44-06-03 by failing to comply with name change requirements: \$50 penalty.

**December 16, 2005** – Notary violated 44-06-13 by notarizing without receiving commission: four-month suspension.

**December 16, 2005** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

**December 16, 2005** – Notary violated 44-06-03 by failing to comply with name change requirements: three-month suspension.

**December 16, 2005** – Notary violated 44-06-03 by failing to comply with name change requirements: \$50 penalty.

**January 30, 2006** – Notary violated 44-06-13.1(8) by being convicted of a criminal offense. Notice of order by default, denying application for six years.

**March 27, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

**April 12, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence: \$75 penalty and three-month suspension.

**June 26, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

**July 19, 2006** – Notary violated 44-06-13.1(2) by notarizing a signature that was a party to the document: \$150 penalty.

**August 21, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: six-month suspension.

**August 21, 2006** – Notary violated 44-06-13.1(1) by notarizing her own signature: six-month suspension.

**August 31, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: six-month suspension.

**August 31, 2006** – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

**September 18, 2006** – Notary violated 44-06-13.1(3) by notarizing her own signature: voluntarily surrendered her commission.

**October 23, 2006** – Notary violated 44-06-13.1(5) by notarizing when there was no year in the date: \$50 penalty.

**November 7, 2006** – Notary violated 44-06-04 by not providing the Secretary of State's office with her seal/stamp and she had notarized: five-month suspension.



### **Copy of the Law**

Attached to this newsletter is a copy of the North Dakota law as it pertains to Notaries Public.

**Notary Notes** is a newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue, Dept 108, Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 8-2901; [www.nd.gov/sos](http://www.nd.gov/sos)

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